

U.S. Department of Justice



*United States Attorney
Southern District of New York*

86 Chambers Street
New York, New York 10007

December 2, 2021

BY ECF

The Honorable Katherine Polk Failla
United States District Judge
United States District Court
40 Foley Square
New York, New York 10007

Re: *The New York Times Company v. United States Department of Justice*, 21 Civ. 06073

Dear Judge Failla:

This Office represents defendant U.S. Department of Justice (“DOJ” or “Defendant”) in this action arising under the Freedom of Information Act (“FOIA”). I write respectfully on behalf of Defendant and plaintiff The New York Times Company (“Plaintiff”) to provide the joint letter due today pursuant to the Court’s Order dated August 8, 2021, Dkt. No. 7, and to request an adjournment of the initial conference scheduled for December 10, 2021, at 3:30pm. The information requested by the Court is as follows:

(i) A brief statement of the nature of the action, the principal defenses thereto, and the major legal and factual issues that are most important to resolving the case, whether by trial, settlement, or dispositive motion

This is a FOIA action in which Plaintiff seeks release of an internal record created by the Office of Special Counsel Robert Mueller (“SCO”) referenced in former SCO prosecutor Andrew Weissman’s book *Where the Law Ends: Inside the Muller Investigation*. Since Plaintiff filed its complaint, Defendant has located and begun processing this record and intends to release all non-exempt portions to Plaintiff once processing is complete. After Defendant makes its release, the parties will be in a better position to determine whether any motion practice, which would likely focus on the validity of exemptions asserted by Defendant, is necessary.

(ii) A brief explanation of why jurisdiction and venue lie in this Court

Plaintiff states that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B) and that, because Plaintiff’s place of business is in this district, venue is proper under 5 U.S.C. § 552(a)(4)(B). Defendant does not contest jurisdiction or venue.

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(iii) A statement of all existing deadlines, due dates, and/or cut-off dates

At this time there are no deadlines, due dates, or cut-off dates.

(iv) A brief description of any outstanding motions

There are no outstanding motions.

(v) A brief description of any discovery that has already taken place and of any discovery that is necessary for the parties to engage in meaningful settlement negotiations

No discovery has taken place or is anticipated as this is a FOIA case.

(vi) A statement describing the status of any settlement discussions and whether the parties would like a settlement conference

No settlement discussions have taken place to date and the parties do not request a settlement conference at this time.

(vii) Any other information that the parties believe may assist the Court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case.

As noted above, Defendant has located and begun processing the record that Plaintiff has requested. Defendant estimates that primary processing of the record will be complete by the end of January 2022 at which time Defendant expects to send the record to several other DOJ components for consultation. In light of this progress, the parties jointly request that the December 10th initial conference be adjourned *sine die* and propose that they submit a joint status letter to the Court by February 14, 2022, proposing next steps in this case. Additionally, because no discovery is anticipated in this FOIA case, the parties respectfully request that they be relieved of the obligation to file a proposed case management plan for this case.

The parties thank the Court for its consideration of this submission.

Respectfully,

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